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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/160,133	09/25/98	LELEU	J 6-1032-021

HM12/0213

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206 SIXTH AVE  
SUITE 1213  
DES MOINES IA 50309-4076

EXAMINER

WHITE, E

ART UNIT	PAPER NUMBER
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1623

DATE MAILED:

02/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/160,133**

Applicant(s)  
**LELEU et al.**

Examiner  
**Everett White**

Group Art Unit  
**1623**



☒ Responsive to communication(s) filed on Dec 6, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 65-67 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 65-67 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. The request filed on December 27, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/160,133 is acceptable and a CPA has been established. An action on the CPA follows.
2. Amendment C filed December 27, 2000 has been received and entered into the record.
3. Claims 65-67 are pending in the case.
4. All 35 U.S.C. statutes not cited in this Office action can be found cited in full in a previous Office action.

#### **35 U.S.C. 103(a) Rejection**

5. Claims 65-67 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Caboche (US Patent No. 5,651,829) for the reasons already of record on pages 2 and 3 of the Office Action filed September 1, 1999.
6. Claims 65-67 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kataura et al (European Patent No. 741140) in view of Caboche (US Patent No. 5,651,829) for the reasons already of record on pages 3-5 of the Office Action filed September 1, 1999.
7. Claims 65-67 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Devos et al (US Patent No. 4,846,139) for the reasons already of record on pages 6 and 7 of the Office action filed March 15, 1999.

#### **Applicant's Arguments**

8. Applicant's arguments filed December 27, 2000 have been fully considered but they are not persuasive. In each of the above rejections, Applicants argue that the Caboche, Kataura et al, and Devos et al references do not discuss~~ed~~ the crystals and do not mention~~ed~~ the shape of the crystals. Applicants state that since no specific crystal are identified, the influence of the maltotriitol content on the shape of the obtained crystals was not mentioned or discussed either. However, this argument is not persuasive since the maltitol content and maltotriitol content determines the shape of the maltitol crystals. Since the Caboche, Kataura et al, and Devos et al

references meet the maltitol and maltotriitol content that is set forth in the instant claims, the shape of the instantly claimed maltitol crystals would be embraced by the references. The shape of the crystals is an inherent characteristic of the maltitol and maltotriitol content of the crystals. Accordingly, the rejection of Claims 65-67 under 35 U.S.C. 103(a) as being unpatentable over the Caboche, Kataura et al, and Devos et al references is maintained.

9. **Summary:** All the pending claims (65-67) are rejected.

10. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

#### **Examiner's Telephone Number, Fax Number, and Other Information**

11. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

*E. White*

White

February 7, 2001



GARY GEIST  
SUPERVISORY PATENT EXAMINER  
TECH CENTER 1600